REMARKS

Claims 1-26 remain currently pending.

In the Office Action mailed October 22, 2003, the Examiner rejected claims 1-26 under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 6,272,281 to De Vos et al ("De Vos") in view of U.S. Patent No. 5,717,281 to Egawa et al. ("Egawa").

The Examiner rejected claims 1-26 under 35 U.S.C. § 103(a) as unpatentable over De Vos in view of Egawa. Applicant traverses this rejection for the following reasons.

Claim 1 recites a combination of elements including, *inter alia*, "a massively parallel video server that includes a plurality of processors all having concurrent access to same set of storage devices for concurrently streaming a massive plurality of video streams." The Examiner admits that De Vos fails to teach or suggest at least this element (*see, e.g.*, Office Action, page 2).

The Examiner relies on Egawa at FIG. 1 and column 1, lines 29-52 in an attempt to cure the deficiencies of De Vos. (Office Action, pages 2-3). Specifically, the Examiner alleges that Egawa's processing modules 3 discloses "a massively parallel video server," as recited in claim 1. However, FIG. 1 clearly shows that processing modules 3 do not "all hav[e] concurrent access to same set of storage devices for concurrently streaming a massive plurality of video streams." Indeed, Egawa FIG. 1 shows that one of the processing modules (labeled 3 at FIG. 1) connects to two of the storage devices while another processing module (below the processing module labeled 3) connects to two different storage devices. Because Egawa discloses processors that have access to different storage modules (not the same), Egawa fails to teach or

suggest a combination including at least "a massively parallel video server that includes a plurality of processors all having concurrent access to same set of storage devices for concurrently streaming a massive plurality of video streams," as recited in claim 1. Accordingly, neither De Vos nor Egawa discloses or suggests at least these elements. Claim 1 is thus patentable over De Vos and Egawa, whether taken alone or in any reasonable combination. Therefore, the rejection under 35 U.S.C. § 103 of claim 1 and claims 2-16, by dependency from claim 1, should be withdrawn.

Claim 17 recites, *inter alia*, a combination including "streaming concurrently and a massive plurality of video streams from one or more video titles stored in a massively parallel video server that includes a plurality of processors all having concurrent access to the same storage devices." For at least the reasons given above, De Vos and Egawa, in combination or alone, fail to teach or suggest at least this element. Claim 17 is thus patentable over De Vos and Egawa, whether taken alone or in any reasonable combination. Therefore, the rejection under 35 U.S.C. § 103 of claim 17 and claims 18-26, by dependency from claim 17, should be withdrawn.

A prima facie case of obviousness has not been made by the Examiner. To establish a prima facie case of obviousness under 35 U.S.C. §103(a), each of three requirements must be met. First, the reference or references, taken alone or combined, must teach or suggest each and every element recited in the claims. (*See* M.P.E.P. § 2143.03 (8th ed. 2001).) Second, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to combine the references in a manner resulting in the claimed invention. Third, a reasonable expectation of success must exist that the proposed

modification will work for the intended purpose. Moreover, each of the three requirements must be found in the prior art, and not be based on Applicant's disclosure. (See M.P.E.P. § 2143 (8th ed. 2001).)

In view of the applied references failing to teach or suggest each and every element recited in the claims, the above rejection under 35 U.S.C. § 103(a) is improper and should be withdrawn on the basis of failing to meet this one requirement alone. The claims are thus allowable.

Moreover, the Examiner alleged that it would have been obvious to modify the teachings of De Vos with the teachings of Egawa. Applicant disagrees because Egawa specifically teaches away from the type of system described by De Vos. In particular, Egawa describes FIG. 1 as having a "bottleneck of a number of processing modules." (Egawa, col. 2, line 40). To overcome this bottleneck, Egawa proposes directly connecting the storage medium to the network bypassing any of processing modules. (*See, e.g.*, Egawa at col. 3, lines 19-28). However, De Vos clearly shows a bottleneck type approach that does not directly connect the storage medium to the network. (*See, e.g.*, De Vos at FIG. 1A). Because Egawa teaches away from De Vos, one of ordinary skill in the art would not have been motivated to combine the teachings of De Vos and Egawa. Therefore, the rejection under 35 U.S.C.§ 103(a) of claims 1-26 should be withdrawn for at least this additional reason. Furthermore, the Examiner has also not established any reasonable expectation of success.

Concerning claim 3, the Examiner alleges that De Vos "inherently teaches an encoder for encoding video and for storing encoded video in the parallel video server SMU 20." Applicant disagrees and submits that the Examiner appears to be using

Official Notice to fill gaps in the teachings of De Vos. Applicant traverses such Official Notice taken by the Examiner and requests that the Examiner either provide evidence, such as a personal Affidavit or citation of competent prior art, to support his modifications to De Vos, as required by M.P.E.P. § 2144.03 or else withdraw the rejection.

Moreover, the Examiner's generalized statements concerning claim 3 (as well as Examiner's statement regarding claims 13-14, 19, and 24) are unsupported by factually-based evidence and constitute unsubstantiated generalizations of questionable relevance to Applicant's claims. Applicant refers the Examiner to the February 21, 2002 Memorandum from USPTO Deputy Commissioner for Patent Examination Policy, Stephen G. Kunin, regarding "Procedures for Relying on Facts Which are Not of Record as Common Knowledge or for Taking Official Notice" ("Memorandum"). In relevant part, the Memorandum states, "If the examiner is relying on personal knowledge to support the finding of what is known in the art, the examiner must provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding" (Memorandum, p. 3). Applicant submits that the Examiner made a generalized statement regarding Applicant's claims 3, 13-14, 19, and 24 without any documentary evidence to support it. Applicant traverses the Examiner's presumed taking of "Official Notice," noting the impropriety of this action, as the Federal Circuit has "criticized the USPTO's reliance on 'basic knowledge' or 'common sense' to support an obviousness rejection, where there was no evidentiary support in the record for such a finding." *Id.* at 1. Applicant submits that "[d]eficiencies of the cited references cannot be remedied by the Board's general conclusions about what is 'basic knowledge' or 'common sense.'" *In*

re Lee, 61 USPQ2d 1430, 1432-1433 (Fed. Cir. 2002), quoting *In re Zurko*, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001). Should the Examiner maintain the rejection after considering the arguments presented herein, Applicant submits that the Examiner must provide "the explicit basis on which the examiner regards the matter as subject to official notice and [allow Applicant] to challenge the assertion in the next reply after the Office action in which the common knowledge statement was made" (*Id.* at 3, emphasis added), or else withdraw the rejection.

If there is any fee due in connection with the filing of this Response, please charge the fee to our Deposit Account No. 07-2347.

Respectfully submitted,

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